

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
DON FIRENZE,)	
Plaintiff)	
)	
V.)	CIVIL ACTION
)	NO. 12-cv-10880-PBS
NATIONAL LABOR RELATIONS BOARD,)	
AND NATIONAL LABOR RELATIONS)	
BOARD UNION,)	
Defendants.)	
_____)	

ORDER

February 19, 2013

SARIS, C.U.S.D.J.

After a review of Plaintiff's objections and the responses, the Court adopts the report and recommendation (for the most part) and dismisses counts I & III. I agree that Karahalius v. National Federal of Federal Employees, Local 1263, 438 U.S. 527 (1989) was not sub silencio overruled by Whitman v. Department of Transportation, 547 U.S. 512 (2006). As such, the Federal Labor Relations Authority ("FLRA") has exclusive jurisdiction over the statutory and contractual duty of fair representation claim. While the parties appear to agree that the magistrate judge mistakenly referred to the collective bargaining agreement as governing the relationship between the union and its members (see Op. 24-25), the bottom line does not change. See Montplaisir v. Leighton, 875 F.2d 1, 4 (1st Cir. 1989) (holding plaintiffs' unfair labor practice claims brought as legal malpractice claims against union attorneys were preempted by Civil Service Reform

Act ("CSRA")); Tunnicliff v. Apfel, 160 F. Supp. 2d 147, 149 (D. Mass. 2001) ("Breach of the duty of fair representation constitutes an unfair labor practice under the CSRA. . . . Unfair labor practice complaints are adjudicated by the FLRA. . . . The reference to contract law in Tunnicliff's complaint is unavailing.") (internal citations omitted); Lane v. Wynne, No. PJM-04-1051, 2006 U.S. Dist. LEXIS 100575, at *14-18 (D. Md. June 23, 2006) (finding CSRA preempted common-law breach of contract and breach of duty of fair representation claims between employee and union).

/s/ PATTI B. SARIS
Patti B. Saris
Chief United States District Judge